

APPEAL NO. 023163
FILED FEBRUARY 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 20, 2002. Resolving the disputed issues before her, the hearing officer decided that the respondent (claimant) sustained a compensable injury on _____, and had resulting disability beginning July 7, 2002, and continuing through the date of the CCH. The appellant (carrier) challenged the hearing officer's decision on sufficiency of the evidence grounds. There is no response in the file from the claimant.

DECISION

Affirmed.

The hearing officer did not err in concluding that the claimant sustained a compensable injury on _____. The claimant testified, and the hearing officer found, that on the date of injury, the claimant sustained an inguinal hernia and a strain/sprain of the right shoulder as a result of lifting and stacking large bags of insulation. The carrier argued that the claimant's allegation was without credence. While the parties presented conflicting evidence, the medical evidence does support the claimant's allegation, and the hearing officer's determination, that the claimant sustained a compensable injury in the form of an inguinal hernia and right shoulder strain/sprain.

The hearing officer also found that the claimant was "unable to work" from July 7, 2002, through the date of the CCH. The standard for a finding of disability is found in Section 401.011(16), which reads

"Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

While the hearing officer did not make a specific finding with language mirroring that of the rule, we affirm her conclusion regarding the claimant's disability as it is supported by the record.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v.

Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Based upon our review of the record, we find no error in the hearing officer's determination.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PRENTICE HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge